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| 09/335,648      | 06/18/1999  | KEVIN L. KIMLE       | P03566USO           | 6709             |

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| EXAMINER |
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KYLE, CHARLES R

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| ART UNIT | PAPER NUMBER |
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3624

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/335,648

Applicant(s)

KIMLE ET AL.

Examiner

Charles Kyle

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 21 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 and 25-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 25-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>Sept. 7, 2004</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Information Disclosure Statement*

The reference referred to in the information disclosure statement filed September 7, 2004, WO 02/063534 A2, has been considered.

### *Claim Rejections - 35 USC § 112*

#### *First Paragraph*

The previous rejection of Claim 12 is rejected under 35 U.S.C. 112, first paragraph is withdrawn.

#### *Second Paragraph*

The rejections of Claims 21 and 22 of the prior office action are withdrawn based on Applicants' amendments.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 1-37** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**With respect to Claims 1-12**, they recite a phrase at (h) "if the input data from a supplier the amount of an allocation parameter...". It is assumed for purposes of examination that Applicant intends the phrase to read "if the input *exceeds* data from a supplier the amount of an allocation parameter...".

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**As to Claims 13-23**, use of the adjective “pending” to describe a contract is confusing; a contract is either executed or not and cannot be partially executed. Perhaps Applicants intend that a proposed contract document is prepared for review of the parties.

**As to Claim 25**, step (b) recites establishing a desired allocation of an amount to a user (assumed to be a supplier), but no method describing such allocation is set forth. For purposes of examination, the Examiner understands that an allocation of one hundred percent of available commodity constitutes an allocation. Additionally, allocation of an amount of a commodity available to a user (supplier) appears to supplies commodity *to* a supplier; the Examiner’s best understanding of the invention is that the supplier is allocated opportunity to fulfill a portion of a buyer’s desired order. This is not claimed.

**As to Claim 25**, the use of the adjective “pending” to describe a contract is confusing; a contract is either executed or not and cannot be partially executed. Perhaps Applicants intend that a proposed contract document is prepared for review of the parties.

**With respect to Claims 26-28**, see the discussion of Claim 25 above.

The Claims have been examined to the best of the Examiner’s ability given the condition of the Claims. The Examiner requests that Applicant additionally review all Claims for occurrences of these phrasings so as to avoid future rejections. For example, Claims 1 and 25, at least were rejected for use of the adjective “pending” in the prior office action, Claim 1 was amended while Claim 25 was not.

### ***Claim Rejections - 35 USC § 103***

For clarity, the rejections set forth in the prior office action are restated below.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

*Examiner's Note*

The Examiner has reviewed Applicant's Remarks and particularly notes that two elements of the Claims are inconsistent with the arguments presented. First, at page 15, 3.a.a, Applicant argues that the invention is a method of facilitating the formation of agricultural contracts for the *future* contracting of agricultural commodities (italics added). The preamble recites this concept, but the concept of future contracting is not present in the body of the Claims. Secondly, alternative phrasing such as at Claim 1 (f) of "...a commodity which the supplier is willing to grow (suggesting future) *or supply to the buyer* (clearly current)" sets the Claim in the environment of a current sale of existing goods and does not require future contracting, only a current sale. This latter environment is exactly that of *Walker* and *Silverman*. Applicant's arguments at pages 15-17 of Remarks hinge on this concept of allocating future production but the Claims do not require such future production.

The Examiner notes that Applicant has amended the allocation/comparison related features of the invention to effectively recite that if a supplier offers to supply more than his/her allocation, the order must be amended to equal or be less than the allocation before a contract is prepared. It is not clear how this is unobvious, given that no buyer would contract for more than

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a specifically limited amount of a commodity. Nonetheless, the *Lupien* reference is provided to show such an order amendment.

The Examiner also notes that at pages 13-18 of the Specification, Applicants provide substantial detail of allocation based on acreage/silo/delivery time factors. These are not recited in detail in the Claims as presented, although such allocation features were discussed in the 16 March, 2005 interview as of possible interest.

**Claims 1-2, 4-8 and 10-28** are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,794,207 *Walker et al* in view of US 5,924,082 *Silverman et al* and further in view of US 5,101,353 *Lupien*.

**Concerning Claim 1**, *Walker et al* disclose the invention substantially as claimed including a method of facilitating the contracting of agricultural commodities using the Internet (Abstract) comprising the steps of:

providing a Web server connected to the Internet (Col. 12, lines 8-21);

providing in operative communication with the server a centralized database system for the storage and retrieval of data (Fig. 2, elements 255, 269, 265, 267 and Col. 12, line 35 to Col. 13, line 62);

storing data in the database system relating to types and amounts of potential commodities desired by one or more commodity buyers (Col. 13, lines 1-10 and 23-29; Col. 31, line 10 to Col. 32, line 15, particularly Col. 32, line 4, "My company wants to purchase 40 tons of steel") and establishing a defined allocation of a type of commodity available to a user of the system according to at least one allocation parameter (Col. 31, lines 60-67, particularly, line 66, "Sellers may fulfill all or part of order");

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in response to a command input into the system, displaying a listing of desired commodities including information related to the types, amounts available of the commodities (Figure 9 and Col. 18, line 56 to Col. 19, line 12);

after being provided the ability to review listings on the system (Col. 9, lines 10-30) receiving input data from a potential supplier of an commodity relating to a specific type and amount of a commodity which the supplier is willing to supply to the buyer harvest or at other times (Col. 13, lines 11-22 and 30-34); and

generating a contract for the sale of the specific type and amount of the commodity by the supplier to the buyer (Fig. 2, element 280 and Col. 13, lines 44-48).

*Walker* further discloses that a contract may be proposed as well as binding at Col. 9, lines 45-51 and Col. 22, line 39 to Col. 23, line 18. Here a CPO is set out by a buyer, but does not bind a supplier; the supplier can respond with a counteroffer. *Walker* discloses comparison of parameters of a buyer offer to a supplier's needs by the supplier but does not specifically disclose the comparison is based on the specific parameters of offer and bid. *Silverman* discloses this limitation at Col. 7, line 13 to Col. 8, line 8 and discloses generation of a pending contract reviewed by buyer and supplier at Col. 8, lines 50-63. *Silverman* further discloses decrementing a current amount available when a contract issues at Col. 7, lines 55-63.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of *Walker* with the described features of *Silverman* and known trading features because this would provide a detailed implementation of the negotiation/counteroffer method disclosed by *Walker*.

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*Walker* does not specifically disclose that input data unacceptable in terms of size is rejected and must be reentered to comply with order size requirements before a proposed contract is prepared for consideration. *Lupien* discloses these concepts at Col. 13, line 24 to Col. 14, line 4, particularly Col. 13, lines 24-31, 37-41 and 58-60. In this instance, a match based on order size would occur only if the input data of size did not exceed the buyer's specified order size. Note that *Lupien* discloses that the contract is tentative and is reviewed and confirmed. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Walker* with the order input requirements of *Lupien* because this would assure that a buyer's requirements were complied with in terms of amount of supplied goods.

*Walker* does not disclose storage, display or receipt of input data specifically relating to types, deliveries and amounts of desired or offered agricultural commodities.

However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The recited providing, storing, displaying, data receipt and generating steps would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to perform the recited method steps for any type of data, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the invention.



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**As to Claim 2**, *Walker et al* disclose information input by a browser at Col. 15, line 66 to Col. 16, line 2.

**Regarding Claims 4-9**, they also recite performing the recited method steps on more detailed forms of agricultural products. As with Claim 1, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability.

**Concerning Claim 10**, see the discussions above. *Walker* discloses updating the listing of commodities at Col. 18, lines 44-55. *Walker* does not specifically disclose that updating is done as a result of contracting. Official Notice is taken that such updating based on a completed contract is old and well known. For example, when a customer completes a sales contract but must take later delivery, the goods he/she purchased are removed from inventory so as to assure the goods are available to the customer and not “double sold.” It would have been obvious to have updated the listing based on a change in data as a result of contracting because this would have assured that commodities contracted for are available for delivery.

**Regarding Claim 11**, *Walker et al* disclose a paper contract at Col. 6, lines 35-44.

**As to Claim 12**, *Walker et al* disclose an electronic contract using a digital signature at Col. 6, lines 45-65.

**Regarding Claim 13**, see the discussion of Claim 1 above. As to the element recited in Claim 13 of updating data, see the discussion of Claim 10.

**As to Claim 14**, *Walker* discloses management of delivery terms and times at Col. 20, lines 30-48. Official Notice is taken that it was old and well known to have buyer determined delivery terms and methods included in a contract. For example, the buyer must determine such terms to assure that someone is present to take delivery; including such terms in a contract

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provides enforceability for the delivery terms. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Walker* to provide buyer determined delivery in a contract to assure that delivery was made per buyer requirements.

**Regarding Claim 15**, it also recites performing the recited method steps on more detailed forms of agricultural products. As with Claim 1, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability.

**Concerning Claim 16**, *Walker* discloses pricing of a contract based on a variable at Col. 10, lines 40-46. Official Notice is taken that pricing is usually the most material term of a contract. Price is the *sine qua non* of commerce.

**As to Claim 17**, *Walker* does not specifically disclose pricing based on delivery time or quality. Official Notice is taken that basing pricing a contract on quality is old and well known in the art. For example, contract pricing of electronic bandwidth is based on quality of service.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of *Walker* to use quality as a factor in pricing because this would have assured buyers that they would receive value for money spent.

**Regarding Claim 18**, *Walker et al* teach accessing a centralized database installed on an Internet Web server at Col. 5, line 66 to Col. 16, line 22.

**As to Claim 20**, see the discussion of Claims 13 and 4 above.

**Concerning Claims 21-23**, see the discussions above. *Walker* further discloses allocation of data based on a variable at Fig. 2, elements contained in element 250.

*Walker* does not specifically allocation based on agricultural contract variables such as allocation by elevators or by geographic region.

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However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The recited allocating step would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to perform the recited method steps for any type of data, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the invention.

**As to Claim 25**, *Walker et al* disclose an apparatus for contracting for commodities over a wide area network comprising an application/web server and a database serve at Col. 11, lines 58-63 and Col. 14, lines 30-52; communications links for the above at Fig. 1, elements 100, 110, 120; one or more user terminals, Fig. 1, elements 300, 400; and software to store data in the database data relating to buyers' desires for commodities (Col. 13, lines 1-10 and 23-29); in response to a command input, displaying a list of desired commodities and related information regarding types, amounts or deliveries of the desired commodities (Figure 9 and Col. 18, line 56 to Col. 19, line 12; receiving input data relating to a specific type and amount of commodity which the supplier is willing to supply (Col. 13, lines 11-22 and 30-34) and generating a contract for the sale of the specific type and amount of the commodity by the supplier to the buyer (Fig. 2, element 280 and Col. 13, lines 44-48). Further, see the discussion of Claim 1.

*Walker* does not disclose storage, display or receipt of input data specifically relating to types, deliveries and amounts of desired or offered agricultural commodities.

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However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The recited providing, storing, displaying, data receipt and generating steps would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to perform the recited method steps for any type of data, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the invention.

As to Claim 26, *Walker et al* disclose a wide area distributed network (WAN) at Col. 11, lines 58-63; plural seller computers in operative communication with the WAN at Fig. 1, elements 300, Fig. 3 and Col. 14, lines 53 to Col. 15, line 22; plural buyer computers in operative communication with the WAN at Fig. 1, elements 400, Fig. 4 and Col. 15, lines 22 to 29; a database storing data relating to a specific type and amount of commodity which a supplier is willing to supply (Col. 13, lines 11-22 and 30-34); a database storing data relating to buyers' desires for commodities (Col. 13, lines 1-10 and 23-29); and generation of a contract for the sale of the specific type and amount of the commodity by the supplier to the buyer (Fig. 2, element 280 and Col. 13, lines 44-48). Further, see the discussion of Claim 1.

*Walker* does not disclose storage, display or receipt of input data specifically relating to types, deliveries and amounts of desired or offered agricultural commodities.

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However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The recited providing, storing, displaying, data receipt and generating steps would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to perform the recited method steps for any type of data, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the invention.

**Concerning Claim 27**, *Walker et al* disclose a software security component to restrict access to the system at Col. 12, lines 27-30 and Col. 15, lines 3-5.

**Regarding Claim 28**, *Walker et al* disclose varying levels of access to data by authorized users of the system at Col. 27, line 19 to Col. 30, line 29.

**With respect to Claim 29**, *Walker* discloses conversion of a pending contract to a binding contract at Col. 9, lines 45-51.

**With respect to Claim 30**, *Walker* does not specifically disclose that a contract term, allocation can be changed. Official Notice is taken that it was old and well known to adjust such terms as the buyer/ seller relationship changed. For example, it would be sensible to change such an allocation if a supplier was experienced a loss in productive capacity. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Walker* to adjust

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contract terms such as allocation because this would allow contracts to most accurately reflect market conditions.

**Concerning Claim 31**, it recites steps whereby partially correct information is prevented from updating browser state. Such a procedure would have been obvious to prevent partially correct data from being used to update browser state when the user did not complete a task. For example, if a user entered only part of new contract data, modification of old data with partial new data would produce incorrect data storage. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Walker* to prevent such incorrect data entry to preserve data integrity.

**As to Claim 32**, see the discussion of Claim 1 and it would further be obvious to require modification of an allocation parameter and quantity to make a newly proposed contract compliant with buyers' needs.

**With respect to Claim 33**, see the discussion of Claim 1.

**As to Claim 34**, see the discussion of Claim 27 above.

**As to claim 35**, it was old and well known to provide varying access levels to users. For example some users would need access to application data while other users would need administrator level access to perform system maintenance. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Walker* to provide varying access levels because this would reduce system exposure to appropriate user levels.

**With respect to Claim 36**, *Walker* discloses plural buyers and sellers at Summary of the Invention.

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**Concerning Claim 37**, see the discussion of Claim 30 and messaging would be inherent to communicating allocation data.

**Claims 3 and 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Walker et al* in view of *Silverman* and Lupien and further in view of the Microsoft Press Computer Dictionary, Third Edition, hereinafter referred to as Dictionary.

**As to Claims 3 and 19**, *Walker et al* discloses the invention substantially as claimed. See the discussions of Claims 1, 13 and 18 above. It does not specifically disclose the use of Java or other applets for input of and access to information to the system. Dictionary, however teaches the Java language and Java applets as useful for secure, robust, platform neutral programming of interactive applications for Internet Web browsers. See Java and Java applet topics, page 268 of Dictionary. It would have been obvious to one of ordinary skill in the art at the time of the invention to have used Java applets for data input and access as taught by Dictionary, in combination with *Walker et al* because this would have provided a for secure, robust, platform neutral method for users to input and access information to contract for commodities on the Internet.

***Response to Arguments***

Applicant's arguments filed April 21, 2005 have been fully considered but they are not persuasive.

At page 13 Applicant asserts that *Walker* is not legal prior art, but provides no additional evidence to support the previously rejected arguments. Response to Applicant's argument on obviousness rejections follows.

Applicant's substantive arguments on remaining rejections begin at page 14 of Remarks. Applicant argues that *Walker* and *Silverman* are not analogous. Applicant implies that the production contracts of the invention are future contracts rather than sales contracts for current goods. As seen in *Examiner's Note* above, this is not supported by the Claim language. Further, in response to applicant's arguments that *Walker* and *Silverman* nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both are methods for the sale of commodities (*Walker*, Background of the Invention, Col. 31, line 10 to Col. 32, line 15, particularly Col. 32, lines 3-15; *Silverman*, Background of the Invention). The references are analogous to the claimed invention.

Other arguments are either addressed in the rejection set forth above or made moot by the new grounds of rejection.



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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles R Kyle whose telephone number is (703) 305-4458. The examiner can normally be reached on M-F 6:00-2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone number for the organization where this application or proceeding is assigned are (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Examiner Charles Kyle

A handwritten signature in black ink, appearing to read "Charles Kyle", with a stylized flourish at the end.

crk  
July 7, 2005